

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN HEGNESS,

Appellant,

vs.

EUGENE CHILBERG,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Second Division.

Filed

DEC 14 1914

F. D. McGeehan,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys of Record.

WILLIAM A. GILMORE, Nome, Alaska,
GEORGE B. GRIGSBY, Nome, Alaska,
Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska,
IRA D. ORTON, Nome, Alaska,
Attorneys for Defendant.

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on July 3d, 1914, complaint was filed herein in words and figures as follows: (Title of court and cause omitted in all papers herein contained, being in all cases the same as the title of the court and cause of this Bill of Exceptions).

Complaint.

(Title Court and Cause.)

Comes now the plaintiff above named and for cause of action against the above-named defendant alleges as follows:

I.

That on or about the 25th day of August, 1909, the

plaintiff and defendant at Nome, Alaska, made, executed, delivered and entered into the following written agreement:

[Agreement, August 25, 1909, Between Chilberg and Hegness.]

“MEMORANDUM OF AGREEMENT, made and entered into this 25th day of August, 1909, by and between EUGENE CHILBERG of Nome, Alaska, party of the first part, and JOHN HEGNESS, also of Nome, Alaska, party of the second part,

WITNESSETH:

THAT, WHEREAS, the parties hereto are desirous of securing mail contract to carry the United States mail between Nome, Alaska, and Unalakleet, Alaska, and are desirous of bidding upon Proposal Route No. 78136 and Proposal Route No. 78137, in the name of the party of [1*] the second part; and,

WHEREAS, the parties are desirous of forming a copartnership for the purpose of operating the said mail routes, or either of them, should the said contracts be obtained, and are desirous of evidencing the terms of their said copartnership in writing;

NOW, THEREFORE, for and in consideration of the mutual promises and other good considerations, it is agreed between the parties hereto as follows:

First. That each of the parties hereto shall endeavor so far as he can to obtain the said contracts above mentioned, or either of them, and to that end

*Page number appearing at foot of page of original certified Record.

the party of the first part agrees to advance all necessary funds needed for such purpose and to obtain the bond required in the proposals for said mail routes, and if either or both of said contracts are secured, party of the first part agrees to furnish the necessary bond required by the Government therefor, and to advance the necessary money to begin and operate the said mail route or routes under the said contract or contracts until the payments are made by the Government according to the contract or contracts.

Second. Party of the second part agrees to furnish his own dog team, sled and equipment and give his personal service as a carrier on said route or routes, and shall reside when not on the mail route, in the Town of Nome, and give his personal attention and supervision to the fulfillment and carrying out of said contract or contracts, if the same is obtained in his name as bidder.

Third. That the party of the second part shall receive the same compensation for his personal services for his attention to the said work as the other carriers employed by this partnership, and shall receive in addition thereto fifteen per cent (15%) of the net profits derived or made from the said contract or contracts, after all other expenses are paid.

Fourth. That the party of the first part for his share shall receive eighty-five per cent (85%) of the net profits derived or made from the said contract or contracts after all expenses are paid for operating the same.

Fifth. That all warrants issued and delivered by

the Government in payment under the said contract or contracts shall be signed by the party of the second part and delivered to the party of the first part, or his representative or agent, who shall keep a strict and accurate account of the same and act as treasurer of the partnership.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) EUGENE CHILBERG [Seal]

(Signed) JOHN HEGNESS. [Seal]

Signed, sealed and delivered in the presence of:

(Signed) WILLIAM A. GILMORE.

(Signed) MABEL SEARL." [2]

II.

That thereafter the plaintiff and defendant, in the name of the defendant, in accordance with the terms of said agreement, obtained the United States mail contract for carrying United States mail between Unalakleet, Alaska, and Nome, Alaska, for a period of four years, at the rate of sixteen thousand dollars (\$16,000.00) per year, said contract to expire in the summer of 1914; that in and by said contract between the plaintiff and defendant, it was contemplated and understood that the said copartnership should embrace and include all United States mail secured or handled over the said route between the said points, during the term of said copartnership.

IV.

That the said mail contract was secured from the United States Government for the plaintiff and defendant under the terms of said copartnership agree-

ment, through the efforts of the plaintiff and without any aid or assistance from said defendant; that thereafter, the plaintiff obtained and furnished the bond required by the United States Government and advanced the necessary money and made such financial arrangements that plaintiff and defendant were able to and did comply with all the terms and conditions of the said contract with the United States Government during the term of said mail contract; that immediately after obtaining said contract from said United States Government plaintiff and defendant mutually agreed that the Pacific Cold Storage Company, a corporation, doing business at Nome, Alaska, should act as the agent of the parties and as treasurer and auditor thereof, and receive all warrants from the United States Government properly endorsed by the defendant, and to pay all bills of said copartnership, and to render an accounting to the plaintiff and defendant at the end of each mail season, in accordance with the terms of the said written agreement of copartnership; that thereafter the defendant [3] took charge of the delivery of said mails and in addition to carrying the regular amount of mail imposed by the weight limit of the said mail contract with the United States Government, the said defendant, using the carriers, teams, equipment and credit of the said copartnership, carried excess mail amounting to several thousand dollars, all of which the said defendant refuses to account for to the plaintiff; that on or about the month of June, 1913, the defendant violating the terms of his said written agreement, endorsed one of the warrants issued by

the United States Government in payment of said mail services, in the sum of three thousand four hundred and six dollars and eleven cents (\$3,406.11), and instead of depositing the same with the Pacific Cold Storage above mentioned, cashed the same at the Miners and Merchants' Bank, at Nome, Alaska, and from the proceeds thereof took the sum of eighteen hundred dollars (\$1800.00); that since said time and on or about the month of May, 1914, the said defendant again drew from the said Pacific Cold Storage Company the sum of six hundred dollars (\$600.00), contending and claiming that said amount was due him at the rate of twelve dollars and fifty cents (\$12.50) per trip, contrary to the terms of said written agreement.

V.

That at the present time all of the terms of the said mail contract have been carried out and the said mail contract fully completed between the said copartnership and the United States Government, save and except the balance payment thereof; that there is now due the said copartnership from the United States Government for services rendered during the past year, the sum of nine thousand five hundred fifty-one dollars and fifty-five cents (\$9,551.55), besides a large amount of money [4] for carrying excess mail during the past year, all of which money will be paid by the United States Government to the said copartnership during the present summer in checks and warrants payable to the order of the defendant; that the said copartnership is indebted to the Pacific Cold Storage Company in about

the sum of eight thousand five hundred dollars (\$8,500.00) for money advanced to the said copartnership during the past year in defraying expenses of carrying out said contract; that the said defendant has boasted and bragged that he has taken twenty-four hundred dollars (\$2400.00) during the past year in excess of what is due him under the terms and covenants of his said agreement of copartnership and threatens to appropriate to his own use all warrants received from the United States Government for excess mail carried during the last four years; that the said defendant has violated the terms and conditions of his said copartnership agreement further by padding his expense account contrary to the terms of the said written agreement; that the said defendant is wholly and utterly insolvent and unable to respond in payment of any judgment that the plaintiff may obtain against him in this action; that unless the Court restrain the said defendant from cashing any and all of the warrants issued and delivered by the United States Government in payment of services rendered under and for said mail service, the plaintiff will be irreparably damaged and injured; that the defendant refuses to make any accounting or render any accounting to the plaintiff for the excess mail carried, or for the money appropriated and taken by him as above alleged, but, on the contrary, the said defendant has stated that the plaintiff could sue and obtain a judgment against him if the plaintiff knew any way to collect the same. [5]

VI.

That the plaintiff has at all times performed each

and every covenant and condition in said copartnership agreement on his part to be performed.

Wherefore, plaintiff prays for an order and decree of the Court as follows:

First. That the Court enter a temporary restraining order, restraining and enjoining the said defendant from secreting or cashing any of the warrants hereafter received by him from the United States Government in payment of any mail services rendered between Unalakleek and Nome, Alaska, until the final hearing and determination of this action, and that the Court further order and direct the said defendant to deliver all of said warrants to the said Pacific Cold Storage Company, treasurer of said copartnership.

Second. That the Court compel the defendant to account to the plaintiff for all money and warrants received for said mail services during the term of said copartnership agreement, and that the Court render an accounting between plaintiff and defendant of all things embraced within the scope of said copartnership, and by its decree dissolve said copartnership.

Third. That upon the final hearing and accounting in this case, the Court render its decree and judgment in favor of the plaintiff and against the defendant for the amount due from said defendant to the plaintiff.

Fourth. That the plaintiff do have and recover from the defendant his costs and disbursements in this action, and for such other and further relief as

shall seem to the court meet and proper.

WILLIAM A. GILMORE,

Attorney for Plaintiff. [6]

United States of America,

District of Alaska,—ss.

William A. Gilmore, being first duly sworn, on his oath, deposes and says:

That he is the attorney for the plaintiff in the above-entitled action; that as such attorney for plaintiff he prepared the above and foregoing complaint and knows the contents thereof and believes the same to be true; that affiant makes this affidavit for and on behalf of the plaintiff for the reason that the said plaintiff is now absent from the District of Alaska.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 3d day of July, A. D. 1914.

[Notarial Seal]

JAS. M. STREETEN,

Notary Public in and for the District of Alaska.

My commission expires 1st September, 1914.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Jul. 3, 1914.
G. A. Adams, Clerk.

And on the same day an affidavit was filed by plaintiff in words and figures as follows:

Affidavit [of William A. Gilmore, Filed July 3, 1914].

(Title Court and Cause.)

United States of America,

District of Alaska,—ss.

William A. Gilmore, being first duly sworn, on oath deposes and says:

That he is the attorney and agent of plaintiff in the above-entitled action, residing at Nome, Alaska; that affiant drew and prepared the agreement of co-partnership mentioned and set forth in plaintiff's complaint between the plaintiff and defendant on or about the 25th day of August, 1909, and at said time was very familiar from consultations between the plaintiff [7] and defendant, with their business transactions in that regard; that on or about the 15th day of June, 1914, affiant, at the request of plaintiff, consulted with the said defendant in an attempt to reach an accounting and settlement between plaintiff and defendant in accordance with the terms and covenants of their said agreement; that affiant and said defendant, Hegness, went to the office of the Pacific Cold Storage Company, in Nome, Alaska, and at said time affiant attempted to get the said defendant to render an accounting to the plaintiff; that said defendant stated to affiant in the presence of Miss Forni, the bookkeeper of the Pacific Cold Storage Company, that the plaintiff Chilberg had nothing to do with the excess mail that was carried over the said mail route, and that whatever warrants were coming in payment of said services belonged to him, Hegness, and that he was going to keep the same; that the said Hegness also stated that he had taken twenty-four hundred dollars (\$2400.00) from the said business, charging twelve dollars and fifty cents (\$12.50) per trip for each and every trip made; that he had collected eighteen hundred dollars (\$1800.00) for it in one lump sum by cashing a warrant at the Miners & Merchants' Bank, in the summer of 1913,

and the balance of six hundred dollars (\$600.00) he had obtained from the Pacific Cold Storage Company quite recently; that the said Hegness then stated that Chilberg could sue him and get judgment if he wanted to, if he, Chilberg, knew of any way of collecting the same; that he had taken the \$2400 and was going to keep it; that owing to the large amount of expenses due the Pacific Cold Storage Company for money advanced to the said copartnership, there will be but little profit, if any, remaining from the warrants still due from the United States Government; that owing to the threats, acts and actions [8] of the said defendant and also owing to the insolvency of the defendant, the plaintiff has no other legal or proper remedy other than by restraining the said defendant from in any manner or way secreting, cashing, assigning or disposing of any or all of the warrants now due from the United States Government for carrying the mail and excess mail between Unalakleet and Nome, Alaska; that affiant has no interest in this action other than that of attorney and agent for the plaintiff.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 3d day of July, A. D. 1914.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

My commission expires Oct. 14, 1917.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Alaska. Jul. 3, 1914. G. A. Adams, Clerk.

On consideration of said complaint and affidavit,

and upon giving an approved undertaking, the Court made and entered its order to show cause and restraining order as follows:

Order to Show Cause and Restraining Order.

(Title Court and Cause.)

To John Hegness, Defendant Above Named:

You are hereby directed and ordered, in conformity with the motion of the plaintiff heretofore made and filed in the above-entitled action, to show cause, if any you have, before this court, at the courtroom, at Nome, Alaska, on Saturday the 11th day of July, 1914, at 10 o'clock A. M., why you, your attorneys or agents, should not be enjoined and restrained from in any manner secreting, cashing, assigning or disposing of any warrants received by you through the United States mails, or otherwise, from the United States Government, in payment of any [9] mail service or services rendered by you as carrier or otherwise, between Unalakleet, Alaska, and Nome, Alaska, pending the final determination of this suit;

And you, your attorneys and agents, are hereby enjoined and restrained from in the meantime secreting, cashing, assigning or disposing of any of said warrants other than to the Pacific Cold Storage Company, a corporation, at Nome, Alaska, until you can be heard in open court or until the further order of the court in the premises.

Done in open court at Nome, Alaska, this 3d day of July, A. D. 1914.

J. R. TUCKER,
District Judge.

United States of America,
District of Alaska,
Second Division,—ss.

I hereby certify that I received the annexed order to show cause and restraining order on the 3d day of July, 1914, and thereafter on the same date I served the same at Nome River, Alaska, upon John Hegness, by delivering and leaving with him a copy thereof.

Returned this 6th day of July, 1914.

E. R. JORDAN,
United States Marshal.

Marshal's costs: 1 service, 6.00.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Jul. 3, 1914, G. A. Adams, Clerk. By J. A. B., Deputy.

On July 16th, 1914, defendant served and filed his demurrer in words and figures as follows: [10]

Demurrer.

(Title Court and Cause.)

Comes now the defendant above named and demurs to the complaint herein for the reason and on the grounds that it appears on the face of said complaint that said complaint does not state facts sufficient to constitute a cause of action.

G. J. LOMEN,
Attorney for Defendant.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Jul. 16, 1914. G. A. Adams, Clerk. By J. A. B., Deputy.

On July 17th, 1914, said order to show cause having been duly served and regularly continued until said day, came on to be heard. The plaintiff, in support of the application for an injunction *pendente lite*, introduced and read in evidence the said complaint and affidavit hereinbefore set forth, and defendant served, filed and read in evidence a certain affidavit in words and figures as follows:

Affidavit [of John Hegness, Filed July 16, 1914].

(Title Court and Cause.)

United States of America,

Territory of Alaska,

Second Division,—ss.

John Hegness, being duly sworn, on oath deposes and says: That he is the defendant above named. That he has read the complaint of the plaintiff herein and the affidavit of William A. Gilmore filed herein.

That he has stated his case to G. J. Lomen, his attorney, and that he is advised by his said attorney that he has a good defense to said action on the merits, but that said attorney has also advised this affiant that the complaint served and filed herein does not state a cause of action against this [11] defendant. That the contract set out in said complaint is void on its face, for the reason that it is in violation of the statutes of the United States and as against public policy, and that the subject matter of said contract is not one that could form the basis of any partnership, and that if the plaintiff has any cause of action against the defendant based on said contract, he, the said plaintiff, has an adequate rem-

edy at law in an action for breach of contract and damages and is a mere contract creditor.

The plaintiff, at the time said pretended contract was made, was a resident of Nome in said district, and that it was then and there contemplated that said plaintiff should furnish all needed capital in the matter of the transportation of the mails of the United States under contract, if such contract should be awarded to the defendant for carrying such mail and that plaintiff should, at all times, superintend and provide for the faithful performance of the contract for carrying said mails, it being intended that the said defendant should assume the duties of carrier rather than that of contractor. That said plaintiff, notwithstanding his agreements aforesaid, departed from the District of Alaska, in the fall of 1909, and has not since returned to said district, and has failed and neglected to furnish the requisite capital, and has failed and neglected to superintend said contract awarded to said defendant for carrying said mail. That by reason of the premises a great deal of extra work was thrown upon the defendant in looking after carriers and other matters connected with said business of carrying said mails, and that said extra services were reasonably worth the sum of six hundred dollars per year or at the rate of twelve dollars and fifty cents (\$12.50) per trip in carrying [12] the mail.

That defendant has at all times accounted to the plaintiff for all monies due to him under said contract. That at the time of making said contract set forth in the complaint, it was expressly understood

and agreed that the bid for carrying mail should embrace only the mail limited to 500 pounds per trip, and that no bid would be made in which plaintiff and defendant were interested for carrying any excess mail. That under no circumstances whatsoever did the plaintiff become interested in any contract for the carrying of any excess mail, and that up to date no money has been paid by the Government of the United States for the carrying of any excess mail, but affiant states that during the winter of 1913-14 contracts were awarded to him for the carrying of excess mail and that the profits, if any, for said work is wholly due the defendant.

JOHN HEGNESS.

Subscribed and sworn to before me this 10th day of July, 1914.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the Territory of Alaska,
Residing at Nome, Alaska.

(My commission expires June 27, 1917.)

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Alaska, Jul. 16, 1914. G. A. Adams, Clerk. By J. A. B., Deputy.

Defendant's demurrer to plaintiff's complaint was also argued and submitted at the same time, and on said July 17, said order to show cause and said demurrer were submitted to the Court. The evidence introduced by both parties on said order to show cause is all hereinbefore set forth.

On September 12th, 1914, the Court rendered an opinion overruling said demurrer and directing that

an injunction *pendente lite* should issue, and counsel were directed to prepare and present draft of such an order to be signed and [13] entered.

On September 15th, 1914, defendant served and filed herein his answer in words and figures as follows:

Answer.

(Title of Court and Cause.)

Now comes the defendant above named and for answer to the complaint herein denies and alleges as follows:

I.

Except as hereinafter admitted, qualified or otherwise alleged, he denies each and every allegation, matter and thing in said complaint contained.

II.

He admits that the plaintiff and defendant on the 25th day of August, 1909, made, executed and delivered the paper writing set forth in paragraph one of said complaint, but denies that said paper writing constituted or is a valid contract or agreement between the parties therein mentioned for the reason that said pretended agreement is contrary to law, contrary to statute and against public policy in this, that said paper writing purports to assign and, if held to be valid in other respects, in effect assigns the claims against the United States, mentioned in the complaint, to another, to wit, the alleged partnership mentioned in the complaint, and also in effect transfers a mail contract between defendant and the United States without the consent of the Postmaster General of the United States, and said con-

tract is void as against public policy in that it contemplates and provides that the defendant should make application in his own name and bid for the mail contracts in said paper writing mentioned without disclosing the interest of said plaintiff [14] in such contract, contrary to the rules and regulations of the postoffice department, and said pretended agreement contemplated and impliedly provided that the defendant should, in his said proposal or bid for mail contracts, falsely represent that such proposal or bid was made in his own interest and not as the agent or representative of any other person or company; and defendant further alleges that pursuant to such contemplation and implication in said pretended agreement contained and with the advice, knowledge and consent of said plaintiff, and for the purpose of securing to himself in his own name the mail contracts mentioned in the complaint and paper writing aforesaid, to wit, mail route No. 78,136, the defendant did, in his own name, make the representations aforesaid and did apply for said mail contract No. 78,136, and by reason thereof obtained from the Government of the United States the said mail contract, being a contract to carry the United States mail for the period of four (4) years between Unalakleet, Alaska and Nome, Alaska, for the agreed sum of sixteen thousand (\$16,000) dollars per year; that said mail contract was fully performed by defendant and terminated before the commencement of this action except as to certain payments due thereon from the Government of the United States.

III.

The defendant further alleges that before and at the time of making said alleged contract between plaintiff and defendant, the said plaintiff and one H. S. Chester were negotiating together and contemplated and intended to bid for said mail contract so let to the defendant as aforesaid; that said H. S. Chester then and there resided at Golovin, Alaska, and was a person duly qualified and able to bid for and carry out any contract to carry United States mail between said [15] Unalakleek, Alaska, and Nome, Alaska; that during said negotiations the said plaintiff pretended and represented to said Chester that he was in favor of bidding for such contract to carry the mails aforesaid under contract with said plaintiff or said Chester, or both, then and there knowing that defendant would also be a bidder for such contract; that defendant had no knowledge of said negotiations of plaintiff and said Chester at the time of making said pretended agreement with plaintiff; that plaintiff at all times before entering into said agreement, to wit, said paper writing set forth in the complaint, enjoined the defendant and demanded of him absolute secrecy in regard to their negotiations and failed and neglected to inform the said Chester of the negotiations pending between himself and defendant, intending then and there to cause said Chester to neglect bidding for said mail contract and for the purpose of stifling the bids for said contract and preventing competition in the bidding therefor; that by reason of the premises the said H. S. Chester and said plaintiff, so defendant

is informed and believes, did, in fact, neglect to bid for said mail contract or contracts and the bidding for said contract was thereby, in fact, stifled and the Government of the United States was thereby, in fact, deprived of competition in the bidding for said contracts to carry mail and prevented from knowing that a stranger to the contract, to wit, said plaintiff, was also interested in said mail contract awarded to the defendant.

IV.

The defendant specifically denies that the plaintiff and defendant, whether in the name of defendant, or otherwise, or in accordance with the terms of said pretended agreement between plaintiff and defendant, or otherwise, obtained any mail contract from the United States, or any other person or persons.

V.

Defendant specifically denies that in and by any [16] written or other contract or agreement between plaintiff and defendant it was contemplated, understood or agreed that the pretended partnership mentioned in said complaint should embrace or include all United States mail secured or handled over the said route between the points above mentioned or any mail except the mail mentioned in said contract secured by said defendant aforesaid, and defendant alleges that any contract made between plaintiff and defendant did not include excess mail, or mail not included in said mail contract between the defendant and the United States; and the defendant further alleges that all excess mail was

carried by defendant under separate, independent, individual and personal contracts secured by him from the Government of the United States, and was carried by him at his sole cost and personal expense and at an aggregate profit of not exceeding \$300.00; that the total sum paid or to be paid for carrying such excess mail was the sum of \$1895.20.

VI.

Defendant further denies that any mail contract was secured for the plaintiff and defendant whether under the terms of any copartnership agreement or otherwise, and denies that any mail contract was secured through the efforts of plaintiff, but defendant admits that plaintiff advanced and paid the costs of the bonds required of the defendant by the Government of the United States, to wit, the sum of twelve hundred (\$1200.00) dollars and no more, but defendant alleges that before the commencement of this action he repaid to the plaintiff the said sum of \$1200.00; defendant also admits that plaintiff loaned him the sum of \$250.00, which sum was also fully repaid to the plaintiff by defendant before the commencement of this action.

VII.

Defendant admits that plaintiff secured for the defendant [17] a line of credit with the Pacific Cold Storage Company, a corporation, and that said company from time to time advanced to defendant certain sums of money which were used by defendant in carrying out his said mail contract with the Government of the United States, but that all such sums so advanced by said company were repaid to

said company before the commencement of this action except the sum of \$2,795.37, and that since the commencement of this action the defendant has paid said Pacific Cold Storage Company the further sum of \$——; that there is now due from said defendant to said Pacific Cold Storage Company the sum of \$2,795.37 and \$422.19 interest, and no more; that said plaintiff is a mere surety for the payment of said balance to said company.

VIII.

Defendant denies that plaintiff and defendant, as partners or otherwise, complied with any contract with the Government of the United States, or were enabled by reason of any act or thing done by plaintiff to comply with any contract with the United States, but that all mail contracts mentioned in the complaint were fully complied with by the defendant and his employees and not in whole or in part by plaintiff.

IX.

Defendant further denies that plaintiff and defendant, mutually or otherwise, agreed with the Pacific Cold Storage Company mentioned in the complaint should act as their agent or as their treasurer or auditor, or that there was any contract, agreement or understanding that said Pacific Cold Storage Company should pay any bills for and on behalf of said plaintiff and defendant, or either of them, except as the same was expressed in the paper writing set forth in the complaint, and defendant admits and alleges that for the purposes therein expressed the said Pacific Cold Storage Company was ap-

pointed by said plaintiff as his representative or agent. [18]

X.

Defendant denies that any carriers, teams, equipment or credit was owned, had or secured by plaintiff and defendant or by the alleged partnership between them, but defendant alleges that the same were, except as hereinafter mentioned, owned, had and secured by defendant or his employees, and that plaintiff in no wise contributed to the carrying of any excess mail or had any interest therein.

XI.

Defendant admits that he has not accounted and will not account to said plaintiff for any of the monies received for or on account of carrying any excess mail.

XII.

Defendant admits that in the month of June, 1913, he endorsed a warrant received under his said four year mail contract, in the sum of \$3,406.11, and cashed the same and retained of said sum the sum of eighteen hundred (\$1800.00) dollars; and that in the month of May, 1914, the defendant endorsed and cashed a like warrant and retained of the sum so cashed the sum of six hundred (\$600) dollars; that all sums so cashed over and above the sum of twenty-four hundred (\$2400.00) dollars, was turned over to the Pacific Cold Storage Company; that all sums so retained by defendant from the proceeds of said warrants were monies belonging to the defendant, and if belonging to any pretended partnership that the same were retained by him as one of such partners

and for the purpose of reimbursing and paying him for extra services rendered said pretended partnership; that said extra services devolved upon defendant and were made necessary by the fact that said plaintiff who, at the time of entering into said written agreement, was a resident of Nome, Alaska, and who, under the terms of said written agreement and the understanding had between said parties, was [19] to superintend and look after the performance and execution of defendant's mail contract in defendant's absence from time to time as a mail carrier, left the District of Alaska in the fall of 1909 and has since resided out of said district and has, since his departure from Alaska, taken no active part in the performance of any mail contract held by defendant and above mentioned, and defendant did perform all of said services which would have been performed by said plaintiff had he not departed from said district; that the reasonable value of the services so performed were \$12.50 per round trip made by said defendant as mail carrier or six hundred (\$600.00) per annum.

XIII.

Defendant alleges that plaintiff did not advance the necessary money to begin or to operate said four year mail contract or said mail route until payments were made by the Government of the United States, or at all, and the defendant was compelled to pay and expend, and did pay and expend on said mail route the sum of one thousand (\$1,000.00) dollars, no part of which has been repaid to him except the sum of three hundred dollars ap-

propriated and paid to defendant by the Alaska Road Commission.

XIV.

Defendant alleges that the amount due from the Government of the United States on his mail contracts at the time of the commencement of this action was the sum of \$6,186.17 and that \$1,895.20 thereof was for carrying excess mail; that all the monies due from the Government of the United States under said mail contracts were, at the commencement of this action, and are now due to the defendant individually and personally and to no other person or persons, and defendant admits that all warrants drawn for the payment of such monies will be drawn and [20] made payable to the order of this defendant and not otherwise.

XV.

Defendant denies that said pretended copartnership were, or was indebted to the Pacific Cold Storage Company in any sum whatsoever, but defendant admits that he is indebted to said company on account of monies advanced by said company to him and used by him in carrying out his said four year mail contract in the sum of \$2,795.37 and \$422.19 interest, and no more.

XVI.

Defendant denies that he has at any time boasted or bragged that he has taken any monies belonging to said pretended or alleged partnership, and he alleges that all monies retained by him and mentioned in the complaint are his personal property and was justly earned by him.

XVII.

Defendant denies that he has ever padded any expense account, or that he has violated any of his contracts or agreements with plaintiff.

XVIII.

Defendant denies that he is insolvent and alleges that he is abundantly able and willing to pay all his just debts and liabilities, or any judgment that may be recovered against him.

XIX.

Defendant denies that unless he be restrained from cashing warrants received by him from the United States, plaintiff will be irreparably injured or damaged or otherwise injured or damaged, and defendant alleges that the plaintiff has a full, complete and adequate remedy at law for any and all damages, if any, suffered by him by reason of any of the acts complained of herein.

For a further, separate and affirmative defense the defendant alleges: [21]

I.

That at the time of the commencement of this action the alleged copartnership existing between plaintiff and defendant had no assets of any kind or nature whatsoever, and that the defendant did not have in his possession any assets whether warrants, drafts, monies or otherwise belonging to said alleged partnership, and that to recover any monies due from the Government of the United States, or to seek an accounting with reference to same or to impress a lien upon same, this action was, and is, for the reasons stated, premature.

And for a further and separate defense the defendant alleges by way of counterclaim that if said alleged partnership shall be found to be a legal and existing partnership, that the defendant, at the expense and request of plaintiff and said partnership, performed work, labor and services for and on account of said alleged partnership in the superintendence and performance of the mail contract mentioned in the complaint, to wit, the four year mail contract therein mentioned, and that said services were of the reasonable value of thirty-four hundred (\$3400.00) dollars, no part of which has been paid except the sum of twenty-four hundred (\$2400.00) dollars, which has been repaid by said alleged partnership, and three hundred dollars received from the Alaska Road Commission.

WHEREFORE defendant prays that said action be hence dismissed, that he have judgment against the plaintiff for the sum of seven hundred (\$700.00) dollars and for his costs and disbursements herein.

G. J. LOMEN,

Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

John Hegness, being first duly sworn, on oath deposes and says: That he is the defendant named in the foregoing action; that he has read the foregoing answer, knows the contents thereof and the same is true, as he verily believes. [22]

JOHN HEGNESS.

Subscribed and sworn to before me this 15th day of September, 1914.

[Notarial Seal]

G. J. LOMEN,

Notary Public for the Territory of Alaska.

(My commission expires June 27th, 1917.)

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sept. 15, 1914.
G. A. Adams, Clerk.

On September 15th, 1914, plaintiff served and filed herein an affidavit and motion for the appointment of a receiver in words and figures as follows:

Motion [for Order Appointing Receiver, etc.].

(Title of Court and Cause.)

Comes now the plaintiff in the above-entitled action, by and through his attorney, and moves the Court for an order appointing a receiver to receive the property belonging to the copartnership of the plaintiff and defendant described in plaintiff's complaint; and for the further order of the Court directing the defendant to deliver to said receiver all United States warrants now in his possession or hereafter to be delivered to him growing out of or pertaining to the things described and set forth in plaintiff's complaint.

This motion is made and based upon the affidavit of William A. Gilmore, served and filed herewith, and upon all the pleadings, files and records in the above-entitled action.

Dated at Nome, Alaska, this 15th day of September, 1914.

WILLIAM A. GILMORE,
Attorney for Plaintiff.

Filed in the office of the clerk of the District Court of Alaska, Second Division, at Nome, Sept. 15, 1915.
G. A. Adams, Clerk.

Affidavit [of William A. Gilmore, Filed September 15, 1914].

(Title of Court and Cause.)

United States of America,
District of Alaska,—ss. [23]

William A. Gilmore, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action; that heretofore, on the 3d day of July, 1914, in the above-entitled action, the Court by its written order duly signed, served and filed, in the above-entitled action, enjoined and restrained the defendant from secreting, cashing, assigning or disposing of any of the warrants received by the defendant from the United States Government for carrying the mails under contract described in plaintiff's complaint, other than to the Pacific Cold Storage Company, which said company was acting as treasurer of the partnership described in the complaint;

That annexed hereto and made a part of this affidavit, and marked Exhibits "A" and "B," are statements from the postoffice department, Washington, D. C., bearing date July 30, 1914, showing that on the 29th day of July, 1914, the postoffice department made out and mailed to the defendant, John Hegness, postoffice warrant No. 363,766, amounting to \$3,903.-02; and on June 26th, 1914, postoffice warrant No. 335,288, amounting to \$1,395.20, and on July 28th,

1914, postoffice warrant No. 360,747, amounting to \$500.00, the total amount of all three of said warrants being \$5,798.22; that none of said warrants could have been received by the defendant in the regular course of mail, prior to the date of said restraining order; that affiant is informed and believes and the said John Hegness, defendant, has received all three of said warrants since, at Nome, Alaska, in the regular course of mail, and is now secreting the same contrary to the order of the Court heretofore entered, served and filed; that the said defendant has not turned over or delivered said warrants, or any of them, to the Pacific Cold Storage Company; that the said copartnership consisting of [24] the plaintiff and defendant, is indebted to the said Pacific Cold Storage Company in the sum of several thousand dollars, advanced by said Company as the treasurer of said copartnership.

That the said warrants above referred to are the partnership property of the plaintiff and defendant, under the agreement set forth in the plaintiff's complaint, and the defendant is threatening soon to leave the District of Alaska and take said warrants with him unless restrained by the Court or compelled by order of the Court to deliver said warrants to the said Pacific Cold Storage Company or to a receiver appointed by the Court; that unless said warrants are delivered to the said Pacific Cold Storage Company, or to a receiver subject to the final order of the Court, the plaintiff will be irreparably damaged and the orders and decree of this Court rendered null and

void and of no effect, said defendant being wholly insolvent.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 15th day of September, A. D. 1914.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

My commission expires October 14, 1917.

Exhibit "A."

POSTOFFICE DEPARTMENT.

Second Assistant Postmaster General.

Washington, July 30, '14.

Statement of payments made for services performed to John Hegness, Contractor, Nome, Alaska, Route Number 78136, Nome, to Unalakleet, Alaska.

Season of Service November 1st to May 31st each year. [25]

| No. of. Warrant. | Month. | No. of Trips. | Warrants Mailed. | Amount. |
|---------------------|--------|------------------|---------------------|------------------|
| | 1913: | | | |
| 207220 | Nov. | | | |
| | Dec. | 9 | Feb. 19, 1914 | \$1527 26 |
| 229892 | Dec. | 7 | Mch. 12, 1914 | 1187 87 |
| 254733 | Dec. | 3 | Apr. 2, 1914 | 509 09 |
| | 1914: | | | |
| 254734 | Jan. | 9 | Apr. 2, 1914 | 1527 27 |
| 257038 | Jan. | 4 | Apr. 9, 1914 | 678 78 |
| 303189 | Jan. | | | |
| | Feb. | | | |
| | Mch. | 22 | May 25, 1914 | 3733 32 |
| 322111 | Feb. | | | |
| | Mch. | 15 | June 13, 1914 | 2545 44 |
| 363766 | Mch. | | | |
| | Apr. | | | |
| | May | 23 | July 29, 1914 | 3903 02 |
| | | | Total, | <hr/> \$15612 05 |

There are two trips performed in May, 1914, for which complete evidence has not been received, to be paid for, the amount of which payment will be \$387.-95, which will be the balance due the contractor for the season.

Exhibit "B."

POSTOFFICE DEPARTMENT.

Second Assistant Postmaster General.

WASHINGTON, July 30, 1914.

Statement of payments made for services performed to John Hegness, Contractor, Nome, Alaska, for carrying excess mail from Unalakleet, to Nome, Alaska.

| No. of Warrant. | Left Unalakleet. | Weight Lbs. | Rate per Pound. | Warrant Mailed. | Amount. |
|--------------------|---------------------|----------------|--------------------|--------------------|-----------------|
| 335288 | .12-23-13 | 488 | 40c | | |
| | 1- 8-14 | 1000 | 40c | | |
| | 2- 2-14 | 500 | 40c | | |
| | 3- 5-14 | 1500 | 40c | | |
| | Total | 3488 | | June 26, 1914 | \$1395 20 |
| 360747 | 4-15-14 | 1250 | 40c | July 28, 1914 | 500 00 |
| | | | | Total, | <hr/> \$1895 20 |

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sep. 15, 1914.
G. A. Adams, Clerk. [26]

On September 15th, 1914, the defendant served and filed herein his motion to vacate restraining order and his affidavit in support thereof, which said motion and affidavit were in words and figures as follows:

Motion [to Vacate Restraining Order, etc.].

(Title of Court and Cause.)

Now comes the defendant above named and by leave of the Court first had and obtained, moves the Court to vacate the restraining order heretofore made and entered herein and the temporary injunctional order made, entered and filed herein on the 12th day of September, 1914. That if said motion to vacate said orders be not granted, then that the Court modify said temporary injunction so far as the same covers or affects any warrants or monies received by the defendant for carrying any excess mail and amounting to the sum of \$1895.20.

This motion is based upon the reasons and grounds stated in the affidavit of John Hegness hereto attached and upon the records and files herein, and especially the answer of said defendant herein.

G. J. LOMEN and

IRA D. ORTON,

Attys. for Deft.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sept. 15, 1914.
G. A. Adams, Clerk.

**Affidavit [of John Hegness, Filed September 15,
1914.]**

(Title Court and Cause.)

United States of America,
Territory of Alaska,—ss.

John Hegness, being first duly sworn, on oath deposes and says:

That he is the defendant in the above-entitled action. That at the time the contract set forth in plaintiff's complaint was signed, on or about the 25th day of August, 1909, by plaintiff and defendant, it was entered into for the purpose of obtaining, as stated therein, a mail contract for carrying the [27] United States mail between Nome, Alaska, and Unalakleet; that circulars had already been issued by the Postoffice Department at that time in which two proposed routes were described upon which bids were solicited, viz., Route No. 78136, limited to five hundred pounds each trip, and Route No. 78137, taking all mail offered; that the bids made by defendant on Route No. 78136 were accepted and no contract whatever was made by the department upon Route No. 78137, but *was* route was discontinued.

Affiant further says that in the month of December, and on or about the 13th day of December, 1913, an order was made by the Second Assistant Postmaster General authorizing the Chief Clerk of the railway mail service at Nome to employ a carrier to carry 1500 pounds of additional mail from Unalakleet to Nome *via* Golovin, Bluff, and Solomon to be known as Route No. 78297. That under said authorization the acting Chief Clerk of the railway mail service at Nome did employ this affiant to carry said additional mail from Unalakleet to Nome *via* Golovin, Bluff and Solomon; that afterwards on divers dates between December, 1913, and May, 1914, the said Second Assistant Postmaster General authorized the said Chief Clerk of the Railway Mail

Service at Nome to employ an additional carrier to carry excess mail from Unalakleet to Nome, Alaska, *via* Golovin, Bluff and Solomon to the extent of 4500 pounds in accordance with said route to be known as No. 78297 as above stated; that in accordance with said authorization the said Chief Clerk of the said Railway Mail Service did, at divers times, employ this affiant to carry said additional mail known as Route No. 78297 and the compensation earned by affiant therefor amounted to the total sum of \$1895.20 and is represented by warrants No. 335,288 and No. 360,748.

Affiant further says that at the time said agreement dated the 25th day of August, 1909, was entered into between plaintiff and defendant it was only contemplated that the defendant [28] should bid on routes No. 78136 and No. 78137; that said route No. 78297 had at that time not been established nor was the establishment of the same thought of or contemplated by the plaintiff or defendant or the officials of the postoffice department; nor was it contemplated by said agreement of the 25th of August, 1909, that the defendant should bid on any excess contract whatever.

Affiant further says that the expenses of carrying said excess mail were paid by affiant out of his own pocket and with his own private funds; that affiant paid the sum of 22½ cents per pound to the carriers for carrying said mail from Unalakleet to Golovin and additional sums, the exact amount of which he cannot state, for carrying said mail from Golovin to Nome.

Affiant further states that he did not use the carrier's teams, equipment or credit of the alleged partnership mentioned in the complaint to carry said excess mail, nor was the carrying of said excess mail any additional expense or any expense at all to said alleged partnership over and above the regular amount which said alleged partnership paid for carrying the regular mail under contract No. 78136; that the alleged partnership mentioned in plaintiff's complaint and claimed to have been created by said agreement of the 25th of August, 1909, never, at any time, owned any teams, or equipment for the purpose of carrying mail, and never, at any time, owned any property whatever save and except any interest which it might have in monies derived from said route No. 78136; that all the equipment and property of every kind used in carrying the mail under said contract No. 78136 was either the private individual property of the defendant or belonged to the carriers who carried the mail under said route No. 78136 for a stated sum per trip; that the only excess or additional mail carried by affiant during the term of said contract No. 78136 was carried [29] between the months of December, 1913, and May, 1914; that during prior years while said contract was in force, large quantities of additional mail were carried from Unalakleet to Nome, while affiant was engaged in the performance of his said contract No. 78136, by other contractors, showing conclusively that said additional and excess mail was in no manner contemplated or included or connected with said contract No. 78136.

Affiant further states that under the alleged partnership agreement of August 25th, 1909, plaintiff promised and agreed to furnish the necessary bond required by the Government for carrying mails under the bid or bids mentioned in said agreement; that after the contract for mail route No. 78136 was let and monies turned over to the Pacific Cold Storage Company by the defendant and thereafter transmitted to said plaintiff, the said plaintiff, without any right or authority so to do, appropriated to himself the alleged cost of the bond furnished, to wit, the sum of \$1200.00; that said plaintiff never furnished the defendant with any statement showing the disposition of funds received by him during the said first year of said mail contract; that it was contemplated and agreed in and by said agreement between said plaintiff and defendant that all monies necessary to begin and operate the said mail route No. 78136 should be advanced by plaintiff without any cost or interest charged therefor; that plaintiff did not advance any monies but caused the Pacific Cold Storage Company to advance various sums of money from time to time; that said Pacific Cold Storage Company for said advances, charges for all of said advances the sum of 8% per annum upon all the monies advanced which interest account, during said contract, amounted to the sum of about \$1600.00 and was retained from time to time by said Pacific Cold Storage Company, except the sum of \$422.19 now claimed [30] to be due for interest upon advances made by said company, and if said contract between said plaintiff and defendant should be held

to be good and valid, then said plaintiff should account to said defendant for said \$1200.00, the alleged cost of said bond, and for all interest monies appropriated by said Pacific Cold Storage Company on account of interest; that in addition to said \$1200.00 and said interest monies the defendant paid and advanced from his own pocket and from his own private funds, the sum of about \$1000.00 in improving and repairing the mail route for carrying said mails, no part of which has been repaid to said defendant except the sum of about \$300.00 paid by the Alaska Road Commission to defendant.

Affiant further states that since the restraining order was made and entered herein the defendant has not cashed any warrants, the proceeds of which have not been turned over to the Pacific Cold Storage Company as contemplated by the agreement set out in the complaint herein, and has not secreted any of the warrants or the proceeds thereof, but that the same are now in his possession and subject to the proper orders of this Court, except the warrants mentioned in the affidavit of William A. Gilmore filed herein on the 15th day of September, 1914, being warrant No. 322,111 for \$2545.44 and warrant No. 363,766 for the sum of \$3903.02, which have not yet been received through the mails, owing, as affiant is informed and believes, to the fact that certain mail was inadvertently left over in Seattle.

JOHN HEGNESS.

Subscribed and sworn to before me this 15th day of September, 1914.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the Territory of Alaska,
Residing at Nome, Alaska.

(My commission expires June 27th, 1917.)

Filed in the office of the Clerk of the District Court of Alaska, [31] at Nome, Sep. 15, 1914. G. A. Adams, Clerk.

On said September 15th, 1914, the order granting the injunction *pendente lite* not having been as yet entered, the Court again took up and heard the following motions and applications at the same hearing and argument:

First: The Original Order to Show Cause.

Second: Defendant's motion to vacate, filed September 15th, 1914.

Third: Plaintiff's motion for a receiver; on said hearing all the papers hereinbefore set forth were introduced in evidence and plaintiff also served, filed and introduced in evidence a further affidavit in words and figures as follows:

Affidavit [of William A. Gilmore (Filed September 16, 1914, as of September 15, 1914)].

(Title of Court and Cause.)

United States of America,
District of Alaska,—ss.

William A. Gilmore, being first duly sworn, deposes and says:

That he has read the affidavit of the defendant, John Hegness, filed in support of his motion to vacate the temporary restraining order and also the answer

that defendant served and filed in this action, and replying to the same on behalf of the plaintiff, alleges that he has in his possession original correspondence between the plaintiff and defendant and the post-office officials of the United States, which clearly show that the postoffice authorities knew at all times that the plaintiff, Eugene Chilberg, was interested in the mail contracts with the defendant, John Hegness, between Unalakleet and Nome, Alaska; that the post-office department officials at Washington, D. C., have repeatedly furnished schedules and financial statements of said business to the plaintiff, Eugene Chilberg, during the past four years; that ever since said partnership began, in the year 1909, and up until the year 1913, the plaintiff [32] and defendant had annual settlements through the treasurer of said partnership, the Pacific Cold Storage Company, as shown by Exhibits attached hereto; that the first disagreement that arose between the plaintiff and defendant was when the defendant, contrary to his agreement, cashed one of the postal warrants and retained therefrom a large part of it to his own use during the season of 1913.

That attached hereto are three annual statements showing the cost and expense of conducting the said business, and the amount of profit and the division of the profit for the first three years of said business, as shown by the books of the Pacific Cold Storage Company and their annual statements made to the plaintiff; that also attached thereto is an annual statement made by the Pacific Cold Storage Company bearing date Aug. 1, 1914, and delivered by the

said Pacific Cold Storage Company to the plaintiff, Eugene Chilberg, after said date, showing the condition of the said partnership business on said date, said statement being marked Exhibit "D."

That for the winter of 1910 and '11, or the first year of said partnership business, the total expense of conducting said business was \$11,829.00; for the second year or the winter of 1911 and 1912, the total expense of conducting said business was \$12,573.56, as shown by said statement; for the third winter, or the winter of 1912 and 1913, Exhibit "C," the total expense of conducting said business was \$12,210.20, while the fourth winter, or last winter 1913 and 1914, the expense as shown by Exhibit "D," statement of Pacific Cold Storage Company, was \$14,504.10; this last winter being the only winter that excess mail was contracted for or carried by Hegness between Unalakleet and Nome.

That the plaintiff claims that the defendant took the money that was coming to the plaintiff in the settlement at the [33] end of 1913 and deposited the same in the bank at Nome, and appropriated the same, or nearly all thereof, to his own use, save and except the sum of \$1296.37 which the plaintiff received, as shown by a statement made by the plaintiff, annexed hereto marked Exhibit "F"; that annexed hereto marked Exhibit "E" is a copy of a letter in the possession of affiant written by the defendant to the plaintiff, bearing date Nov. 3d, 1913, which admits that the said defendant took the said money, and that he arbitrarily and without right drew from said business the sum of \$12.50 per mail trip, or \$2,400.00.

That plaintiff contends that he received at the end of the first year his amount of the profits mentioned in Exhibit "A," and at the end of the second year his amount of the profits mentioned in Exhibit "B"; that Hegness at the end of the third year, 1913, appropriated the profits of the business and refuses now to account for any profits for 1914, or last year.

That affiant is informed by the plaintiff and believes that all of the mail carried as excess mail during the last year of said partnership was carried by the said partnership and was paid for by the defendant out of the funds of said partnership furnished by said Pacific Cold Storage Company and charged up against the said partnership business, and is a part of the said 1914 expense for the past winter.

That the plaintiff is now in Los Angeles, California, and is unable to make an affidavit as to the facts, and affiant makes this affidavit on his behalf as to all statements and things within affiants possession.

That annexed hereto is a copy of a letter from the plaintiff to affiant, bearing date Aug. 12, 1914, marked Exhibit "G," showing the manner in which the plaintiff claims the defendant has misappropriated the partnership money.

WILLIAM A. GILMORE. [34]

Subscribed and sworn to before me this 16th day of September, 1914.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

My commission expires Oct. 14, 1917.

Exhibit "A."

STATEMENT.

Mail Contract—Nome—Unalakleet—Winter 1910-11—John Hegness.

RECEIPTS.

P. O. Warrants received and turned over to Pacific Cold Storage
 Company\$16000.00

DISBURSEMENTS:

Wages—

| | |
|---------------------|-----------|
| Hegness, J..... | \$3600 00 |
| Johnson, E. | 2250 00 |
| " " (extra)..... | 54 00 |
| Abrahamson, H. | 2250 00 |
| " " " | 54 00 |
| Curran, P. | 1350 00 |
| Erickson, L. | 1275 00 |

\$10833 00

Sundries—

| | |
|----------------------------|--------|
| Hegness (extra team) | 400 00 |
| Bond (1910-1) | 300 00 |
| Telephoning | 39 00 |
| Extra drivers | 81 00 |
| Bookkeeping | 150 00 |
| Extras | 26 00 |

996 00

\$11829 00

Net Profit,

\$ 4171 00

DIVISION OF PROFITS:

| | | |
|-----------------------|------------------|---------|
| John Hegness..... | 15% of \$4171 00 | 625 65 |
| Eugene Chilberg | 85% of 4171 00 | 3545 35 |

Exhibit "B."

STATEMENT.

Mail Contract—Nome—Unalakleet—Winter 1911-12—John Hegness.

RECEIPTS.

P. O. Warrants received and turned over to Pacific Cold Storage
 Co.\$15830 30
 Oct. 16, 1912 Cash. paid by John Hegness to Pacific Cond Storage
 Co. 169 70

\$16000 00

DISBURSEMENTS:

Wages—

| | | |
|----------------------|-----------|------------|
| Hegness, J..... | \$3600 00 | |
| Johnson, E. | 1950 00 | |
| Curran, P. | 1800 00 | |
| Erickson, L. | 1350 00 | |
| Hammer, J. R. | 1275 00 | |
| Seddon & Others..... | 775 00 | |
| Eagle Launch | 175 00 | \$10925 00 |

Sundries—

| | | |
|---------------------------------|--------|---------|
| Hegness (extra team) | 400 00 | |
| Carriers (extra allowance)..... | 158 00 | |
| Team hire | 117 00 | |
| Helpers | 60 00 | |
| Bookkeeping | 200 00 | |
| Xmas cigars & affidavit..... | 19 00 | |
| Telephoning | 72 19 | 1026 69 |

Eagle Launch—

| | |
|------------------------|---------------|
| Purchase price | 400 00 |
| Repairs & expense..... | 376 87 |
| | <u>776 87</u> |

Deduct for trips charged to wages

| | | |
|----------------------|--------|--------|
| as noted above | 175 00 | 601 87 |
|----------------------|--------|--------|

Hegness, John

| | | |
|---------------------------|-------|----------|
| Overdrawn on account..... | 20 00 | 12573 56 |
|---------------------------|-------|----------|

 3426 44

DEDUCT:

| | |
|---|--------|
| Due to Eugene Chilberg, Bond for 1911-12..... | 300 00 |
|---|--------|

 \$ 3126 44

DIVISION OF PROFITS:

| | | |
|-----------------------|------------------|---------|
| John Hegness | 15% of \$3126 44 | 468 97 |
| Eugene Chilberg | 85% of 3126 44 | 2657 47 |

Exhibit "C."

STATEMENT.

Mail Contract—Nome—Unalakleet—Winter 1912-13—John Hegness.

RECEIPTS:

| | |
|--|------------|
| P. O. Warrants received and turned over to Pacific Cold Storage Co. | \$8993 89 |
| June 23, 1913—Cash paid by John Hegness to Pacific Cold Storage Co. | 1000 00 |
| Aug. 29, 1913—Cash paid by John Hegness to Pacific Cold Storage Co. | 2600 00 |
| | <hr/> |
| | \$12593 89 |

[36]

DISBURSEMENTS:

Wages—

| | | |
|----------------------|-----------|------------|
| Hegness, J. | \$3675 00 | |
| Curran, P. | 2250 00 | |
| Johnson, E. | 2250 00 | |
| Erickson, L. | 1350 00 | |
| Dexter, Joe | 1275 00 | |
| Seddon, Steamer | 225 00 | \$11025 00 |
| | <hr/> | |

Sundries—

| | | | |
|------------------------------------|--------|---------|----------|
| Hegness (extra team)..... | 400 00 | | |
| Wilhelmina & others..... | 322 90 | | |
| Carriers (extra allowance)..... | 108 00 | | |
| Team hire | 50 00 | | |
| Helpers | 33 00 | | |
| Xmas cigars | 27 00 | | |
| Telephoning | 69 30 | | |
| Bookkeeping | 150 00 | | |
| Meals, Bluff, Golovin, Solomon.... | 25 00 | 1185 20 | 12210 20 |
| | <hr/> | <hr/> | <hr/> |
| | | | 383 69 |

Difference between \$12593.89, the amount turned over to the Pacific Cold Storage Co. and \$16000, the total amount of warrants received from the P. O. Department by Hegness which amount Hegness appropriated to his own use..... 3406 11

3789 80

DEDUCT:

| | |
|---|---------|
| Due Eugene Chilberg, Bond for 1912-3..... | 300 00 |
| | <hr/> |
| | 3489 80 |

DIVISION OF PROFITS:

| | |
|--|---------|
| John Hegness, 15% of \$3489 80..... | 523 47 |
| Eugene Chilberg, 15% of \$3489 80..... | 2966 33 |

Exhibit "D."

Nome, Alaska, Aug. 1, 1914.

John Hegness

In Account with PACIFIC COLD STORAGE COMPANY.

1913:

| | | | | | | |
|-------|-----|---------------|----|------|--------|-----|
| Nov. | 14. | Cash advanced | ev | 1848 | 378 00 | 1 |
| | 22. | " " | v | 1850 | 287 50 | 2 |
| | 30. | " " | | 1857 | 265 00 | 3 |
| Dec. | 5. | " " | | 1873 | 265 00 | 4 |
| | 11. | " " | | 1874 | 275 00 | 5 |
| | 12. | Long Distance | | 1877 | 10 75 | |
| | 19. | Cash Advanced | | 1878 | 285 00 | 6 |
| | 27. | " " | | 1880 | 265 00 | 7 |
| | 31. | " " | | 1884 | 350 00 | 8-9 |
| 1914: | | Long DI. | | 1889 | 9 70 | |
| Jany. | 4 | Cash | | 1896 | 265 00 | 10 |
| | 8. | " | | 1897 | 265 00 | 11 |

[37]

| | | | | | | |
|-------|-----|---------------|--|------|--------|----|
| | 12. | Cash | | 1898 | 265 00 | 12 |
| | 16. | " | | 1901 | 265 00 | 13 |
| | 17. | " | | 1903 | 265 00 | 14 |
| | 22. | " | | 1904 | 265 00 | 15 |
| | 26. | " | | 1905 | 265 00 | 16 |
| | 29. | " | | 1906 | 265 00 | 17 |
| | 31. | " | | 1909 | 265 00 | 18 |
| | " | Long D. Jany. | | 1921 | 8 40 | |
| Feby. | 4. | Cash | | 1923 | 265 00 | 19 |
| | 9. | " | | 1925 | 265 00 | 20 |
| | 11. | " | | 1926 | 265 00 | 21 |
| | 16. | " | | 1929 | 265 00 | 22 |
| | 20. | " | | 1930 | 265 00 | 23 |
| | 23. | " | | 1931 | 265 00 | 24 |
| | 25. | " | | 1932 | 265 00 | 25 |
| | 28. | " | | 1934 | 265 00 | 26 |
| | " | Long D. Feby. | | 1944 | 5 50 | |
| Mar. | 4. | Cash | | 1952 | 265 00 | 27 |
| | 9. | " | | 1953 | 265 00 | 28 |
| | 12. | " | | 1954 | 265 00 | 29 |
| | 16. | " | | 1955 | 265 00 | 30 |
| | 20. | " | | 1957 | 265 00 | 31 |

| | | | | | |
|-------|-----|--------------------------|------|-----------|-------|
| | 23. | Cash | 1958 | 553 00 | 32-33 |
| | 27. | " | 1959 | 265 00 | 34 |
| | 30. | " Advance v | 1961 | 265 00 | 35 |
| | 31. | " " | 1963 | 265 00 | 36 |
| | " | Long Distance | 1965 | 11 00 | |
| Apr. | 6. | Cash Advanced | 1975 | 265 00 | 37 |
| | 9. | " " | 1977 | 265 00 | 38 |
| | 13. | " " | 1978 | 265 00 | 39 |
| | 15. | " " | 1978 | 265 00 | 40 |
| | 20. | " " | 1982 | 265 00 | 41 |
| | 23. | " " | 1983 | 530 00 | 42-43 |
| | 30. | " " | 1986 | 265 00 | 44 |
| | " | Long D. Apr. | 1991 | 5 90 | |
| May | 4. | Cash Advanced | 2000 | 265 00 | 45 |
| | 11. | " " | 2001 | 409 00 | 46 |
| | 16. | " " | 2002 | 277 00 | 47 |
| | 25. | " " | 2005 | 452 00 | 48 |
| | 30. | L. D. May | 2010 | 5 35 | |
| June | 8. | Cash Advanced | 2023 | 1196 00 | |
| | | | | <hr/> | |
| 1914: | | | | 14504 10 | |
| Apr. | 20. | P. O. War. #207220 J. E. | 176 | 1527 26 | |
| | 23. | " " " #229892 J. E. | 176 | 1187 87 | |
| June | 2. | P. O. War. #254733 C | 17 | 509 09 | |
| | " | P. O. War. #254734 C | 17 | 1527 27 | |
| | " | P. O. War. #257038 C | 17 | 678 78 | |
| | 15. | P. O. War. #303189 C | 19 | 3733 32 | |
| July | 1. | P. O. War. #322111 C | 21 | 2545 44. | |
| | | | | <hr/> | |
| | | | | 11709 03. | |

Exhibit "E."

Nome, November 3d, 1913.

Mr. Eugene Chilberg,

Los Angeles, Cal.

Dear Sir:

Just received your letter this evening and got to *live* against in the morning with the mail so it will be a short letter. The money you claim you want to have sent out I deposited in the bank so I would have something to start with this fall. Now [38]

one of my carriers quit so I had to pay out money for feed *til* I got somebody and you know I got nothing so how do you figure I am to get along. I have been borrowing money from the bank every year for these things paying big interest and traveling up and down the Coast in the summer tending to those things and did not even get thanks from you for it. You don't remember that I spent a whole summer fixing the trail before we started the contract and I borrowed \$600 besides the \$250 you let me have and got back from the government about \$400.00 and I sent back your money, so you can see who came out the loser.

It is true Mr. Chilberg that you got me into the service, but thats all I gotten so far. You have made the profits. You could at lease have come up here in the summer and look after things so I could have gone to work. I am now after a trip down the coast looking over the trail after the big storm and my carriers don't want to start unless they get bigger pay so you see what I am up against all the time. You don't know that the winters have not been like they used to be on the coast, no ice to speak of so we have had to travel over capes all winter and early breakups in the spring.

I have all ways taken the worst of it myself and nearly lost my life three times just to get the mail through on time. Now I was going to do all those things and quit broke and let it go, but now you are telegraphing to everybody just as if I was a big criminal thats a little more than I can stand. I want some pay for all my worry and time ever since

the contract started. I think about \$12.50 per trip ever since the contract started should be just about right.

You are wondering why I have made other arrangements but I am not going in with anybody for I am out of the race, and my wife and I will *live* Nome in the Spring without a dollar. I hope that you will get a partner that will do all these things for you and say nothing.

Best regards to you and family.

Yours truly,

JOHN.

Exhibit "F."

WINTER 1912-13:

Due Eugene Chilberg from Funds in Possession
John Hegness.

Bond for 1912-13 ($\frac{1}{4}$ of \$1200
total premium)..... 300 00

85% of \$3,489 80 net profit for

1912-13.....2966 33 \$3266 33

DEDUCT:

Sept. 4, 1913. Interest on account
to *Pacitif* Cold Storage Co. as-
sumed by Chilberg..... 316 16

Oct. 10, 1913. Cash received
from Pacific Cold Storage Co.
by Chilberg..... 67 53

Jan. 17, 1914. Cash Received

from Pacific Cold Storage Co.

by Chilberg..... 912 68 1296 37

Balance due Chilberg out of

\$3,405.11, which was appropri-

ated by Hegness..... \$1969 96

[39]

Exhibit "G."

Los Angeles, Cal., Aug. 12th, 1914.

Mr. Wm. A. Gilmore

or

Mr. Geo. B. Grigsby,

Nome, Alaska.

Dear Sir:

Referring to my letter of August 11th to you relative to the \$3406.11 mentioned in Paragraph 4 of the complaint, would say that Mr. John Hegness appropriated this amount in the following manner:

On June 23d, 1913, Hegness cashed a warrant for \$1697.11 of which he appropriated to his own use \$697.11, and the balance he deposited with the Pacific Cold Storage Co., and on August 29th, 1913, he also cashed another warrant for \$5309.00, of which he appropriated to his own use \$2709.00, and the balance of \$2600.00 he deposited with the Pacific Cold Storage Company. The amounts of \$697.11 and \$2709.00 which he appropriated to his own use, total \$3406.11 which amount he retained out of the \$16000 he received from the Post Office Department for carrying the mail during the winter of 1913-14.

Another matter which must not be overlooked, is the premium due me on the \$20,000.00 bond furnished

for Hegness. This premium has been distributed through the four years of his contract at the rate of \$300.00 per year, and there is now due me \$600.00 for the past two years which has not been paid.

I trust this information will post you fully as to how Hegness failed to turn over all the warrants he received from the Post Office Department last year to the Pacific Cold Storage Co. which is in direct violation of his agreement with me.

Very truly yours,

EUGENE CHILBERG,

\$639 South Hill Street.

EC/JAG.

Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, September 16, 1914, as of Sept. 15, 1914. G. A. Adams, Clerk.

On September 18th, 1914, the Court made and entered its order vacating in part, the original restraining order, which said order was in words and figures as follows: [40]

Order (Modifying Injunction and Restraining Order).

(Title Court and Cause.)

In the above-entitled action IT IS HEREBY ORDERED that the injunction and restraining order heretofore made and signed in the above-entitled action be, and the same is hereby dissolved in so far as said injunction and restraining order enjoins or restrains the defendant John Hegness from endorsing and cashing any and all warrants of the postoffice department issued to the said John Hegness for carrying excess mail from Unalakleet to Nome,

Alaska, and particularly the said injunction and restraining order dissolved as to warrants Nos. 335,288 and 360,747 for \$1395.20 and \$500.00 respectively.

Dated at Nome, Alaska, September 18th, 1914.

J. R. TUCKER,
District Judge.

[Endorsed]: Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 18, 1914. G. A. Adams, Clerk. By _____, Deputy.

On September 18th, 1914, the Court also made and entered its order granting an injunction *pendente lite*, which said order was in words and figures as follows, to wit: [41]

Injunction Pendente Lite.

(Title Court and Cause.)

This matter coming on for hearing before the Court this 18th day of September, 1914, the plaintiff being represented by his attorneys, Messrs. George B. Grigsby and William A. Gilmore, and the defendant being represented by his attorneys Messrs. G. J. Lomen and Ira D. Orton, and the Court having heretofore heard and considered all of the affidavits, evidence and testimony produced on the part of the plaintiff and the defendant and being fully advised in all the premises,

NOW, ORDERS and DIRECTS that pending the final determination and decree or other order of this Court, you, John Hegness, defendant, your attorneys and agents, be, and each of you are hereby enjoined and restrained from secreting, cashing, assigning or disposing of (except to the Pacific Cold

Storage Co., Nome, Alaska,) or taking, sending, or permitting to be sent without the District of Alaska, or the jurisdiction of this Court, postal warrant No. 363,766, bearing date July 29th, 1914, for \$3903.02, this being a warrant received by you on account of the contract of August 9th, 1909, set forth in plaintiff's complaint, or any other postal warrants received or hereafter received by you on account of said contract of August 9th, 1909, in payment of any services on U. S. Mail Route No. 78136.

Done in open court at Nome, Alaska, this 18th day of September, 1914.

J. R. TUCKER,
District Judge.

[Endorsed]: Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sep. 18, 1914. G. A. Adams, Clerk. By _____, Deputy. [42]

The defendant at the time of the making of the order last hereinbefore set out duly excepted thereto.

The plaintiff on September 18th, 1914, filed an approved undertaking for said order in amount as fixed by the Court.

On September 26th, 1914, the Court made and entered its order appointing a receiver herein, in words and figures as follows, to wit: [43]

Order Appointing Receiver.

(Title Court and Cause.)

This matter coming on for hearing upon the motion of the plaintiff for a receiver, and the Court having heard all the evidence and affidavits sub-

mitted and being fully advised in the premises, and finding that a receiver of the Court is necessary to take, receive and hold the assets of the partnership described in the written contract set forth in the plaintiff's complaint pending the further and final decree and order of the Court,

NOW, THEREFORE, It is by the Court HEREBY ORDERED that a receiver be appointed and that G. A. Adams, Clerk of the above-entitled court, be and he is hereby appointed receiver of said copartnership with authority to demand, receive and hold, subject to the further and final order of the Court, from plaintiff and defendant, all postal warrants received in payment of services rendered under contract of August 25th, 1909, U. S. Mail Route No. 78136, and particularly United States postal warrant No. 363,766, bearing date July 29, 1914, for \$3903.02 issued in payment of services rendered under said contract, or any other warrants received thereunder, and the parties hereto are further ORDERED AND DIRECTED to deliver all said warrants to said receiver immediately.

Done in open court this 26th day of September, 1914.

J. R. TUCKER,
District Judge.

[Endorsed]: Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sep. 26, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. [44]

The defendant at the time of the making of said order last above set forth duly excepted thereto.

Defendant while objecting and excepting to said order stated through his counsel that if a receiver was to be appointed, he had no objection to the appointment of the clerk.

[Order Settling and Allowing Bill of Exceptions.]

The foregoing BILL OF EXCEPTIONS contains all the evidence introduced at the hearings therein set forth, and said bill having been served, filed and presented for settlement by defendant, within the time allowed by law and extensions thereof made by orders duly entered, and being found full, true and correct, is hereby settled and allowed.

Dated at Nome, Alaska, October 17th, 1914.

J. R. TUCKER,

Judge of the District Court, District of Alaska,
Second Div.

The foregoing is defendant's proposed Bill of Exceptions in the action therein entitled.

October 13, 1914.

G. J. LOMEN,

LYONS & ORTON,

Attorneys for Defendant. [45]

Service by receipt of a copy of the within Bill of Exceptions admitted at Nome, Alaska, this 13th day of October, 1914.

WILLIAM A. GILMORE,

Attorney for Plaintiff.

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant.

Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 13, 1914. G. A. Adams, Clerk. By _____, Deputy. Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. [46]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

Opinion.

The complaint in this case sets up an alleged written contract of partnership between the plaintiff and the defendant concerning the obtaining of a mail contract and the carrying of mail between certain points in Alaska, Second Division. The alleged contract is fully set forth in the complaint, and is as follows:

“MEMORANDUM OF AGREEMENT, made and entered into this 25th day of August, 1909, by and between EUGENE CHILBERG, of Nome, Alaska, party of the first part, and JOHN HEGNESS, also of Nome, Alaska, party of the second part,

WITNESSETH:

THAT, WHEREAS, the parties hereto are de-

sirous of securing mail contract to carry the United States mail between Nome, Alaska, and Unalakleet, Alaska, and are desirous of bidding upon Proposal Route No. 78136 and Proposal Route No. 78137, in the name of the party of the second part; and

WHEREAS, the parties are desirous of forming a copartnership for the purpose of operating the said mail routes, or either of them should the said contracts be obtained, and are desirous of evidencing the terms of their said copartnership in writing;

NOW, THEREFORE, for and in consideration of the mutual promises and other good considerations, it is agreed between the parties hereto as follows:

First. That each of the parties hereto shall endeavor so far as he can to obtain the said contracts above mentioned, or either of them and to that end the party of the first part agrees to advance all necessary funds needed for such purpose and to obtain the bond required in the proposals for said mail routes, and if either or both of said contracts are secured party of the first part agrees to furnish the necessary bond required [47] by the Government therefor, and to advance the necessary money to begin and operate the said mail route or routes under the said contract or contracts until the payments are made by the government according to the contract or contracts.

Second. Party of the second part agrees to furnish his own dog team, sled and equipment and give his personal services as a carrier on said route or routes, and shall reside when not on the mail route,

in the Town of Nome, and give his personal attention and supervision to the fulfilment and carrying out of the said contract or contracts, if the same is obtained in his name as bidder.

Third. That the party of the second part shall receive the same compensation for his personal services for his attention to the said work as the other carriers employed by this partnership, and shall receive in addition thereto fifteen per cent (15%) of the net profits derived or made from the said contract or contracts after all other expenses are paid.

Fourth. That the party of the first part for his share shall receive eighty-five per cent (85%) of the net profits derived or made from the said contract or contracts after all expenses are paid for operating the same.

Fifth. That all warrants issued and delivered by the government in payment under the said contract or contracts shall be signed by the party of the second part and delivered to the party of the first part, or his representative or agent, who shall keep a strict and accurate account of the same and act as treasurer of the partnership.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) EUGENE CHILBERG. (Seal)

(Signed) JOHN HEGNESS. (Seal)

Signed, sealed and delivered in the presence of:

(Signed) WILLIAM A. GILMORE.

(Signed) MABEL SEARL."

Plaintiff alleges that the defendant has already

disregarded this contract and threatens to further disregard the same, and alleges generally a disagreement between the parties as to the division of the profits arising from said contract, etc. The complaint then prays for a temporary restraining order against the defendant until a final hearing of the case, and that an accounting may be had as to the funds of said partnership.

To the complaint, the defendant interposes a general demurrer; first, on the ground that such contract is illegal, because [48] against public policy, and second, that neither the allegations of the complaint nor the terms of the alleged contract show a legal partnership between the parties, but only an ordinary contract, in which the plaintiff is merely a contract creditor of the defendant.

The law as especially applicable to the consideration of the demurrer in this case may be stated as follows:

“It is a fundamental rule of pleading that a demurrer will only lie for defects which appear upon the face of the pleading to which it is opposed.”

And, in an action upon a written contract, the contract must be construed upon demurrer by the light afforded by the declaration alone, and not by circumstances suggested, but which do not appear upon the face of the declaration; and, further, the illegality of a contract sued on must appear upon the face of the complaint, or it cannot be taken advantage of by demurrer.

Encyc. Plead. & Prac., Vol. 6, p. 297, and cases cited in note 4, etc.

Generally and affirmatively speaking, it is undoubtedly the law that a contract against public policy is illegal and cannot be enforced, but, as said in *McCowen v. Pew*, 21 L. R. A., N. S., page 800,

“A contract should not be declared to be in contravention of public policy unless it is apparent that it controverts some public statute, or is against good morals, or that its tendency is to interfere with the public welfare or safety.”

In the last analysis, therefore, every case must be determined from the particular facts involved, or upon the facts as presented by the pleadings. Confining myself, therefore, to a consideration of the contract as set forth in the complaint, as we are bound to do, in passing on the demurrer, I am unable to declare the contract in this case to be illegal. [49]

Counsel for defendant has cited numerous cases in support of his contention that this contract is illegal on its face, as against public policy. But these cases were either not decided upon demurrer, or else the facts in them were so different as to be inapplicable here. In *McMullen v. Hoffman*, 174 U. S. 639, the facts of that case are totally different from the facts here, and the evil intention of the parties, as well as the evil tendency of the contract, is most flagrant. I fail to see, as was held in that case, where the contract here discloses any tendency to lessen the bids, or that the parties thereto committed fraud in combining their interests and conceal-

ing the same and submitting different bids as if they were *bona fide*. The contract here shows on its face nothing more or less than an agreement that the parties shall endeavor to obtain a contract for carrying the mail in Alaska, and that they shall divide the net profits upon an agreed percentage basis, after the objects of the contract are completed and after the money due on same is paid by the United States. There is no suggestion of a purpose to lessen the bids, nor is that the effect or tendency of the contract.

In *King v. Winents*, 17 Am. Rep., page 11, the parties were rival bidders for a Government contract, and it affirmatively appears that they agreed not to bid against each other, so as to enable one or both to get the contract at a much higher rate, and to divide the profits among them; there was nothing of the kind in this case, or, at least, the contract does not show such state of facts on its face. Much stress was placed in argument upon the case of *Tool Co. v. Norris*, 2 Wallace, 45 (69 U. S.). In that case there was an agreement for compensation (contingent) for procuring a contract from the Government for furnishing its supplies. The [50] precise terms of the contract do not appear, but no one can read the statement of the facts without being shown the lobbying done by the plaintiff and the lobbying character of his contract. I am aware that it was said in that case that "agreements for compensation contingent upon success suggest a use of sinister and corrupt means for the accomplishment of their ends," but this case can have no just applica-

tion to the contract now under consideration,—a contract of partnership to obtain a mail contract and to divide the net profits after the Government payments are completed, without a scintilla of evidence of any lobbying influence,—so glaring in the Tool case; from the very nature of the contract in the Tool case, its lobbying and corrupting tendency was obvious, and the personal conduct of the plaintiff, as shown by the evidence, deserved the severest censure and condemnation.

In *Meguire v. Corwine*, 101 U. S. 108, the case went to a jury upon the evidence. The contract was for the appointment of a special counsel for the Government upon a contingent fee. The facts of the case show fraud, and the tendency of the contract involved necessarily the device of lobbying and undue solicitation for said employment.

The case of *McConaghy v. Clark*, 77 Pac. 1084, is so totally unlike the case here that it is hardly necessary to refer to it. It was substantially, however, a question of substituting another for the real mail contractor, which, of course, the Court held could not be done without the consent of the Postoffice Department. No such substitution was contemplated in the contract involved in this case.

The case of *Marshall v. B. & O. Railroad Co.*, 14 How. 314, was clearly a lobbying contract of the first order, and can have no bearing on the case here; so was the case of *Trist v. Child*, 21 Wal. [51] 441, clearly a case of a contract for “lobbying services.” In the last case, the Court said at page 451:

“The agreement in the present case was for

the sale of the influence and exertions of the lobbying agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate, and, considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy. No one has a right, in such circumstances, to put himself in a position of temptation to do what is regarded as so pernicious in its character. The law forbids the inchoate step, and puts the seal of its reprobation upon the undertaking.”

While this Court heartily indorses the language above quoted, in this case it sees no application to the facts of the case cited by the defendant; and, while it also indorses the language of the Court in *McMullen v. Hoffman*, *supra*, condemning contracts that tend to lessen competition and suggest a fraudulent combination of interests and concealment by the parties to it,—it fails to discover on the face of the contract alleged in the complaint here, any such suggestion that would bring this contract within any of the cases above referred to.

As opposed to the cases relied on by the defendant, we now consider the case of *Hobbs v. MacLean*, 117 U. S. 567. That case was not a mail contract, it is true, but the essential facts of the case are almost identical with the case at bar. It was a partnership formed with respect to a Government contract which the party expected to and did subsequently obtain; the contention that this contract was

evil in its intention could have been advanced as forcibly in that case as in the case at bar, but it was scarcely considered; the Court confined itself almost entirely to the question as to whether there was an assignment such as is forbidden by sections 3477 and 3737 of the Revised Statutes. Comparing the case at bar with the many cases cited by the defendant and heretofore referred [52] to, in which the facts and circumstances appear showing the evil tendency of the particular contracts, emphasizes the rule that a contract which simply purposes to obtain a Government contract and to divide the net profits therefrom, should not be declared void on its face. This case of *Hobbs v. MacLean* also disposes of the contention that there is any assignment of a claim against the United States by the contract alleged here, as being forbidden by sections 3477 and 3737 of the Revised Statutes, as was the case in *Spofford v. Kirk*, 97 U. S. 484, and the other cases cited in *Hobbs v. MacLean* and relied on by the defendant. The Court said, in *Hobbs v. MacLean*, at page 575:

“When the contract of partnership was made, Peck had no claim which he could present for payment, or on which he could have brought suit. He therefore had no claim, the assignment of which the statute forbids. It is so clear that the articles of partnership do not constitute such an assignment as is forbidden by the sections under consideration, that it would be a waste of words further to discuss the point.”

And, as especially applicable to the case at bar,

the Court further said on page 576:

“For it is a rule of interpretation that, where a contract is fairly open to two constructions, by one of which it would be lawful and the other unlawful, the former must be adopted.”

And further:

“Interpreting the articles in the light of the statute as it is the duty of the Court to do, they were not intended to transfer and do not transfer to the plaintiffs any claim or demand, legal or equitable, against the United States, or any right to exact payment from the Government by a suit or otherwise. They may be fairly construed to be the personal contract of Peck, by which, in consideration of money to be advanced and services to be performed by the plaintiffs, he agreed to divide with them a fund which he expected to receive from the United States on a contract which he had not yet entered into. This is the plainly expressed meaning of the partnership contract, and it is only by a strained and forced construction that it can be held to effect a transfer of Peck’s contract with the United States and be a violation of the statute.” [53]

This language of the Court in *Hobbs v. MacLean*, *supra*, could scarcely be more apposite to the case at bar; and an examination of that case comparing therewith *McMullen v. Hoffman*, *supra*, and similar cases, marks to my mind a clear distinction between the latter cases and the case at bar. See, also, *Northern Pacific Lumber Co. v. Spore*, 75 Pac. Rep.

890, following *Hobbs v. MacLean*; also *Dulaney v. Scudder*, 94 Fed., page 6.

The case of *Bellows v. Russell*, 51 Am. Dec. 238, held:

(1) That an "agreement that one shall bid for several for a mail contract is not void, unless made for some illegal purpose affecting public policy," and,

(2) "Whether a contract was made for an illegal purpose is a question of fact for a jury."

And, this was the holding of the Court, notwithstanding that "when the contract was made, the parties met and, learning that each intended to bid for the mail route named and had made some preparation for that purpose, entered into the written contract," which was quite similar to the contract here. See, also, the case of *Breslin v. Brown*, 15 Am. Rep. 627, which is also quite similar to the case at bar.

An attentive reading of the citations by defendant's counsel from *Lindley*, page 181, and *Parsons*, sec. 39, will, I think show that they do not support his contention, or do not apply to the case here. The contract, stripped of all surplusage, is simply one between the parties:

- (1) To obtain the mail contract;
- (2) To provide the means of performing it; and,
- (3) To divide the net profits, after the Government has paid over the money. That, and that only, is the meaning and scope of the partnership; the contract here does not contemplate a partnership as to the administration of the actual business of the

office of postmaster, as suggested by Mr. Parsons, *supra*, nor does [54] it pretend to be a partnership, with all the incidents of that relation of the parties as to creditors, etc. It is merely a partnership *inter sese* for the purposes indicated above. If it be true, as is the inevitable result of defendant's argument, that all contracts to obtain a Government contract are against public policy and illegal, then this contract should be condemned, but manifestly this is not the law as declared by the Supreme Court in *Hobbs v. MacLean*, *supra*, and other similar cases decided by that Court; in a note to *Houlton v. Dunn*, 30 L. R. A. 737, it is said:

"The line of demarcation between contracts for procuring legislation which are upheld and those which are condemned, seems to be well drawn. All contracts for legitimate professional services for a fixed compensation are enforced; while those for a contingent fee, or which require personal influence, personal solicitation of members, or any trickery or underhanded means to secure the legislation, are not enforced. . . . There are many expressions in opinions of the courts which would lead to a general condemnation of all contracts to procure legislation, and some decisions tend also in that direction. But those expressions are not intended to apply to cases of legitimate services, and the decisions are usually in cases where some evil tendency or influence was apparent. There seems to be no case in which

legitimate services for a fee payment absolute have been condemned."

See also 4 L. R. A. (N. S.) 312, and note.

We think this a correct statement of the rule, in full accord with Supreme Court (U. S.) decisions, and, while it is made with reference to the procuring of legislation, there is no reason why it should not apply in cases of obtaining mail contracts; and the test of their legality or non-legality made to depend on the fact as to whether or not the contract is legitimate with reference to all the circumstances of each particular case, to be inquired into by the Court or jury; if this be so, the contract here being unobjectionable to any statutory inhibition, under the decision of *Hobbs v. MacLean, supra*, should not be condemned by sustaining the demurrer, unless some evil tendency is apparent upon the face of [55] the contract, and, surely, nothing of this character is apparent on the contract alleged in the complaint.

With respect to the second ground of the demurrer that the complaint, or alleged contract therein, does not state a legal partnership, or rather, that the relation of partners does not exist between the plaintiff and the defendant, it seems very clear to the Court from the terms of the written contract itself that it was the intention of the parties to form a partnership *inter sese*. The plain declaration of the partnership in the written contract, taken alone, is a high, if not conclusive, test of the intention of the parties to form a partnership *inter sese*, and to join together to carry on a

trade or adventure for their common benefit, each contributing property and services and having a community of interests in the profits. As between themselves, the written contract shows unmistakably their intention to form the partnership, with all the requisites of a joint purpose, a joint contribution of services and money and a community of interests in the net profits.

In most of the cases wherein the question has arisen as to whether or not there was a legal partnership between persons who had been dealing together, or jointly, with reference to certain transactions, or property, it did not appear in the written contract, if there was one, any, or rather, a positive declaration of the partnership, or, it has arisen with respect to the partnership, *quoad*, its liability to creditors. Questions of this kind are often difficult of solution, but no such state of facts exists in the case at bar.

Without stating specifically wherein they are applicable [56] to this particular case, the well-known maxims of equity that "He who seeks equity must do equity," and "He who comes into equity must come with clean hands," are cited in defendant's brief; presumably they are cited with reference to the seemingly gross inequality of a division of the net profits between the parties as provided by the contract. It is sufficient to say with respect to that matter that it is a feature of the case which may not be considered on the demurrer, but may come up for consideration and determination when the case is heard on its merits.

See *Feather v. Palm Bros.*, 133 Fed. 466; *Fleming v. Lee*, 109 Fed. 953-955; *Meehan v. Valentine*, 145 U. S. 611, and a very learned and elaborate note to *Cudahy Packing Co. v. Hybon*, 18 L. R. A., pages 981-2-3, etc., and page 1105.

Having reached the conclusion, therefore, that the contract alleged by the complaint is not illegal on its face; that it does not contravene any of the provisions of the Revised Statutes of the United States, and that the complaint sufficiently states and shows the existence of a legal partnership between the parties, and in view of the positive allegations of the complaint of the defendant's insolvency, his actual and threatened diversion of the partnership funds still payable by the Government, and the evident necessity for an accounting between the parties, I am of opinion that the case presented is one of equitable cognizance and demands the equitable interposition of the court. See *High on Receivers*, under title of *Injunctions*, p. 492, sec. 760 and seq.

For these reasons, the demurrer is overruled and the restraining order may be allowed until the final hearing of the case, and it is so ordered.

J. R. TUCKER.

Sept. 12, 1914. [57]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By _____, Deputy. [58]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

**Assignment of Errors [on Appeal from Order
Granting Injunction].**

Now comes the defendant in the above-entitled action and assigns the following errors as having been committed by the Court in making and entering its order granting an injunction *pendente lite* on September 18th, 1914, upon which errors said defendant will and does rely upon his appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit.

1.

The Court erred in making and entering said injunction order, for the reason that the complaint in this action does not state facts sufficient to constitute a cause of action.

2.

The Court erred in making and entering said injunction order in this, that it appears from the allegations of the complaint that the contract upon which this suit is based is void on its face. [59]

3.

The Court erred in making and entering said injunction order in this, that it appears from the alle-

gations of the complaint that the contract upon which this suit is based is contrary to the statutes of the United States and void.

4.

The Court erred in making and entering said injunction order in this, that it appears from the allegations of the complaint that the contract upon which this suit is based is contrary to the laws and regulations of the Postoffice Department of the United States, and against public policy and void.

5.

The Court erred in making and entering said injunction order in this, that it appears from the allegations of plaintiff's complaint, and the answer and affidavits filed herein that this suit was and is prematurely brought and was brought at a time when said defendant had no postoffice warrants whatever in his possession or under his control.

WHEREFORE, defendant prays that said injunction *pendente lite*, so made and entered on September 18th, 1914, be reversed, and that he be restored to all things which he has lost thereby.

G. J. LOMEN,

LYONS & ORTON,

Attorneys for Defendant and Appellant. [60]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk.

By W. C. McG., Deputy. G. J. Lomen, Ira D. Orton, Attorneys for Deft. [61]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

**Petition for Appeal [from Order Granting
Injunction] and Order Allowing Appeal.**

Comes now, John Hegness, defendant herein, and believing himself aggrieved by that certain order granting an injunction *pendente lite* herein made and entered on September 18th, 1914, hereby appeals from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that said appeal be allowed and that an order be made fixing the amount of bond for costs on appeal, to be given by the appellant.

G. J. LOMEN,

LYONS & ORTON,

Attorneys for Defendant and Appellant.

On this 17th day of October, 1914, IT IS HEREBY ORDERED that said appeal as above prayed for be allowed and the amount of bond for costs to be given by appellant is hereby fixed at \$250.00.

J. R. TUCKER,

Judge District Court, District of Alaska, Second
Division. [62]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Petition for Appeal and Order Allowing Same. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen, Ira D. Orton, Attorneys for Deft. [63]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

**Undertaking for Costs on Appeal [from Order
Granting Injunction].**

KNOW ALL MEN BY THESE PRESENTS:
That we, John Hegness, as principal, and S. O. Groven and Ralph Lomen, as sureties, are held and firmly bound unto Eugene Chilberg, the plaintiff in the above-entitled action, in the sum of TWO HUNDRED AND FIFTY DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

SEALED WITH OUR SEALS and dated at Nome, Alaska, this 17th day of October, 1914.

WHEREAS, an order has been made and entered in the above-entitled action allowing the appeal of the defendant to the United States Circuit Court of Appeals for the Ninth Circuit, from a certain interlocutory order made and entered herein on the 18th day of September, 1914, granting an injunction *pendente lite*, and a citation is about to issue citing and admonishing the said plaintiff, Eugene Chilberg, to be and appear at a term of said Court of Appeals to be held in the City of San Francisco, State of California, and show cause why said order should not be reversed; [64]

NOW, THEREFORE, if the appellant, John Hegness, will prosecute said appeal to effect and answer all costs, if he fails to sustain his appeal, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN HEGNESS,

By IRA D. ORTON, [Seal]

His Attorney.

S. O. GROVEN. [Seal]

RALPH LOMEN. [Seal]

United States of America,
District of Alaska,—ss.

S. O. Groven and Ralph Lomen, being first duly sworn, each for himself and not one for the other deposes and says:

That he is a resident of Nome, Alaska, and a surety on the within and foregoing undertaking; that he is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other officer of any court, and that he is worth the sum of

\$250.00 over and above all just debts and liabilities and exclusive of property exempt from execution.

S. O. GROVEN.

RALPH LOMEN.

Subscribed and sworn to before me this 17th day of October, 1914.

[Notarial Seal]

D. B. CHACE,

Notary Public, District of Alaska.

My commission expires May 12, 1917. [65]

The foregoing bond is hereby approved this 17th day of October, 1914.

Done in open court.

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Undertaking for Costs on Appeal—Injunction Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen, Ira D. Orton, Attorneys for Deft. Civil Bond Record, Vol. 5, Page 384. [66]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

Assignment of Errors [on Appeal from Order Appointing Receiver].

Now comes the defendant in the above-entitled action and assigns the following errors as having been committed by the Court in making and entering its order appointing a receiver on September 26th, 1914, upon which errors said defendant will and does rely upon his appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit.

1.

The Court erred in making and entering said order appointing a receiver for the reason that the complaint in this action does not state facts sufficient to constitute a cause of action.

2.

The Court erred in making and entering said order appointing a receiver in this, that it appears from the allegations of the complaint that the contract upon which this suit is based is void on its face.

3.

The Court erred in making and entering said order appointing a receiver in this, that it appears from the allegations of the complaint that the contract upon which this suit [67] is based is contrary to the statutes of the United States and void.

4.

The Court erred in making and entering said order appointing a receiver in this, that it appears from the allegations of the complaint that the contract upon which this suit is based is contrary to the laws and regulations of the Postoffice Department of the

United States and against public policy and void.

5.

The Court erred in making and entering said order appointing a receiver in this, that it appears from the allegations of plaintiff's complaint and the answer and affidavits filed herein that this suit was and is prematurely brought and was brought at a time when said defendant had no postoffice warrants whatever in his possession or under his control.

WHEREFORE, defendant prays that said order appointing a receiver, so made and entered on September 26th, 1914, be reversed and that he be restored to all things which he has lost thereby.

G. J. LOMEN,

LYONS & ORTON,

Attorneys for Defendant and Appellant.

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen, Ira D. Orton, Attorneys for Deft. [68]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

Petition for Appeal [from Order Appointing Receiver] and Order Allowing Appeal.

Comes now John Hegness, defendant herein, and believing himself aggrieved by a certain order made and entered herein on the 26th day of September, 1914, appointing a receiver, hereby appeals from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that said appeal be allowed and that an order be made fixing the amount of bonds for costs on appeal to be given by appellant.

G. J. LOMEN,
LYONS & ORTON,

Attorneys for Defendant and Appellant.

On this 17th day of October, 1914, IT IS HEREBY ORDERED that said appeal as above prayed for be allowed, and the amount of the bond for costs to be given by appellant is hereby fixed at \$250.00.

J. R. TUCKER,
Judge District Court, District of Alaska, Second
Division. [69]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Petition for Appeal and Order Allowing Same. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen, Ira D. Orton, Attorneys for Deft. [70]

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

**Undertaking for Costs on Appeal [from Order
Appointing Receiver].**

KNOW ALL MEN BY THESE PRESENTS:
That we, John Hegness, as principal, and S. O. Groven and Ralph Lomen, as sureties, are held and firmly bound unto Eugene Chilberg, the plaintiff in the above-entitled action, in the sum of TWO HUNDRED AND FIFTY DOLLARS, lawful money of the United States of America for the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

SEALED WITH OUR SEALS and dated at Nome, Alaska, this 17th day of October, 1914.

WHEREAS, an order has been made and entered in the above-entitled action allowing the appeal of the defendant to the United States Circuit Court of Appeals for the Ninth Circuit, from a certain interlocutory order made and entered herein on the 26th day of September, 1914, appointing a receiver, and a citation is about to issue citing and admonishing the said plaintiff, Eugene Chilberg, to be and appear at a term of said Court of Appeals to be held in the

City of San Francisco, State of California and show cause why said order should not be reversed;

NOW, THEREFORE, if the appellant, John Hegness, will [71] prosecute said appeal to effect and answer all costs, if he fails to sustain his appeal, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN HEGNESS,

By IRA D. ORTON, [Seal]
His Atty.

S. O. GROVEN. [Seal]

RALPH LOMEN. [Seal]

United States of America,
District of Alaska,—ss.

S. O. Groven and Ralph Lomen, being first duly sworn, each for himself and not one for the other deposes and says:

That he is a resident of Nome, Alaska, and a surety on the within and foregoing undertaking; that he is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other officer of any court, and that he is worth the sum of \$250.00 over and above all just debts and liabilities and exclusive of property exempt from execution.

S. O. GROVEN.

RALPH LOMEN.

Subscribed and sworn to before me this 17th day of October, 1914.

[Notarial Seal]

D. B. CHACE,

Notary Public, District of Alaska.

My commission expires May 12, 1917.

The foregoing bond is hereby approved this 17th day of October, 1914.

Done in open court.

J. R. TUCKER,
District Judge. [72]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Undertaking for Costs on Appeal Order Apptg. Receiver. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 17, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen, Ira D. Orton, Attorneys for Deft. Civil Bond Record, Vol. 5, Page 386. [73]

UNITED STATES OF AMERICA.

District Court, District of Alaska, 2d Division.

Cause No. 2531.

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

Praeceptum [for Transcript of Record].

To the Clerk of the Above-entitled Court:

You will please prepare and certify transcript of the record in the above-entitled action consisting of Bill of Exceptions and the appeal papers. Also annex copy of the Court's opinion as required by the

rules of the Court of Appeals.

Oct. 19.

IRA D. ORTON,
Of Attys. for Deft.

[Endorsed]: Cause No. 2531. District Court, District of Alaska, 2d Division. Chilberg, Plaintiff, vs. Hegness, Defendant. Praecipe. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 19, 1914. G. A. Adams, Clerk. By ———, Deputy. [74]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court for the District of Alaska,
Second Division.*

No. 2531.

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 74, both inclusive, are a true and exact transcript of the Bill of Exceptions, Court's Opinion on Demurrer, Assignment of Errors on Order Granting Injunction Pendente Lite, Petition for Appeal and Order Allowing Same, Undertaking for Costs on Appeal, Assignment of Errors on Order Appointing a Receiver, Petition

for Appeal and Order Allowing Same, Undertaking for Costs on Appeal and Praecipe for Transcript of Record, in the case of Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant, No. 2531—Civil, this Court, and of the whole thereof, as appears from the records and filed in my office at Nome, Alaska; and further certify original Citations (2) in the above-entitled cause are attached to this transcript.

Cost of transcript \$21.75, paid by Ira D. Orton, of attorneys for defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 27th day of October, A. D. 1914.

[Seal]

G. A. ADAMS,
Clerk. [75]

**Citation [on Appeal from Order Granting Injunction
(Original)].**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
Eugene Chilberg, Greeting:

YOU ARE HEREBY cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, on the 15th day of November, 1914, pursuant to an order allowing an appeal filed in the office of the Clerk of the District Court for the District of Alaska, Second Division, from a certain interlocutory order granting an injunction *pendente lite* filed and entered in said court on the 18th day of September, 1914, in that certain suit wherein you, the said Eugene Chilberg,

are plaintiff, and John Hegness is defendant, to show cause, if any there be, why the said interlocutory order rendered against the said John Hegness, as in said order allowing the appeal mentioned should not be reversed and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 17th day of October, 1914.

J. R. TUCKER,
Judge of the District Court for the District of Alaska, Second Division.

Service of the foregoing citation is hereby admitted at Nome, Alaska, this 17th day of October, 1914.

WILLIAM A. GILMORE,
Of Attorneys for Plaintiff. [76]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Citation. [77]

**Citation [on Appeal from Order Appointing
Receiver (Original)].**

UNITED STATES OF AMERICA,—ss.
The President of the United States of America, to
Eugene Chilberg, Greeting:

YOU ARE HEREBY cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, on the 15th day of November, 1914, pursuant to an order allow-

ing an appeal filed in the office of the Clerk of the District Court for the District of Alaska, Second Division, from a certain interlocutory order appointing a receiver filed and entered in said court on the 26th day of September, 1914, in that certain suit wherein you, the said Eugene Chilberg, are plaintiff, and John Hegness is defendant, to show cause, if any there be, why the said interlocutory order rendered against the said John Hegness, as in said order allowing the appeal mentioned, should not be reversed and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 17th day of October, 1914.

J. R. TUCKER,

Judge of the District Court for the District of Alaska, Second Division.

Service of the foregoing citation is hereby admitted at Nome, Alaska, this 17th day of October, 1914.

WILLIAM A. GILMORE,
Of Attorneys for Plaintiff. [78]

[Endorsed]: No. 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Citation.

[Endorsed]: No. 2523. United States Circuit Court of Appeals for the Ninth Circuit. John Hegness, Appellant, vs. Eugene Chilberg, Appellee. Transcript of Record. Upon Appeal from the

United States District Court for the District of
Alaska, Second Division.

Received November 10, 1914.

F. D. MONCKTON,
Clerk.

Filed November 27, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the District Court for the District of Alaska,
Second Division.*

EUGENE CHILBERG,

Plaintiff,

vs.

JOHN HEGNESS,

Defendant.

**Order Enlarging Time to File Record and Docket
Case.**

On motion of counsel for John Hegness, appellant in the above-entitled suit, IT IS HEREBY ORDERED that the time for filing and docketing the transcript and record in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, upon appeals from the order granting an injunction *pendente lite* and from the order appointing a receiver, be, and the same is hereby enlarged thirty days after the return day of the citations issued on said appeals.

Done in open court at Nome, Alaska, this 26th day of October, 1914.

J. R. TUCKER,
District Judge.

Service admitted October 26th, 1914.

WILLIAM A. GILMORE,
Atty. for Plf.

[Endorsed]: 2531. In the District Court for the District of Alaska, Second Division. Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant. Order Enlarging Time. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 26, 1914. G. A. Adams, Clerk. By _____, Deputy. L. G. J. Lomen, Ira D. Orton, Attorneys for Deft.

United States of America,
District of Alaska,
Second Division,—ss.

I, G. A. Adams, Clerk of the District Court for the District of Alaska, Second Division, do hereby certify that I have compared the foregoing copy with the original order enlarging time to file record and docket case in the U. S. Circuit Court of Appeals for the Ninth Circuit, San Francisco, Cal., in the case of Eugene Chilberg, Plaintiff, vs. John Hegness, Defendant, No. 2531—Civil, this Court, now on file and of record in my office at Nome, in the District of Alaska, and the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court this
27th day of October, A. D. 1914.

[Seal]

G. A. ADAMS,

Clerk.

By W. C. McGuire,

Deputy.

[Endorsed]: No. 2531. In the District Court for
the District of Alaska, Second Division. Eugene
Chilberg, Plaintiff, vs. John Hegness, Defendant.
Certified Copy. Order Enlarging Time to File Rec-
ord and Docket Case.

No. 2523. United States Circuit Court of Appeals
for the Ninth Circuit. Order Under Rule 16 En-
larging Time to Dec. 16, 1914, to File Record Thereof
and to Docket Case. Filed Nov. 10, 1914. F. D.
Monckton, Clerk. Refiled Nov. 27, 1914. F. D.
Monckton, Clerk.

